

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
California-Oregon Broadcasting, Inc. d/b/a)	
Crestview Cable Communications)	CSR-8538-A
)	
For Modification of the DMA for Stations:)	
)	
KFXO, NPG of Oregon, Inc., Bend, OR;)	
)	
KOHD, Three Sisters Broadcasting LLC, Bend, OR;)	
)	
KVTZ, NPG of Oregon, Inc., Bend, OR.)	

MEMORANDUM OPINION AND ORDER

Adopted: April 15, 2014

Released: April 15, 2014

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. California-Oregon Broadcasting, Inc. d/b/a Crestview Cable Communications (“Crestview”) filed the above-captioned petition for special relief seeking to extend the must carry markets of Bend, Oregon stations KFXO, KOHD and KTVZ located in the Bend designated market area (“DMA”) to the communities of Prineville (Crook County), and Culver, Metolius and Madras (Jefferson County) in the Portland DMA, as well as unincorporated areas therein.¹ Subsequently, two Portland DMA stations filed oppositions to the petition,² to which Crestview filed a reply³ and a surreply was also filed.⁴ However,

¹ Petition for Special Relief filed Oct. 31, 2011, by Crestview at 1 (hereinafter “Petition”). KFXO-LD (Channel 39), Bend, Oregon is licensed to NPG of Oregon, Inc. Pet. at 6 & n.27 (citing Exhibit 4, KFXO Information); *see also* License No. BLDTA-20110325ACI, available at http://licensing.fcc.gov/prod/cdbs/pubacc/Auth_Files/1421551.pdf. KOHD (Channel 51) Bend, Oregon, is licensed to Three Sisters Broadcasting, LLC. Petition at 6 & n.29 (citing Exhibit 5 (KOHD Information); Harris Decl. at ¶ 17); *see also* License No. BLCDT-20060915AOZ, available at http://licensing.fcc.gov/prod/cdbs/pubacc/Auth_Files/1148922.pdf. KTVZ (Channel 21), Bend, Oregon, licensed to NPG of Oregon, Inc. Pet. at 7 & n.33 (citing Exhibit 6 (KTVZ Information); Harris Decl. at ¶ 18); *see also* License No. BLCDT-20100122ABM, available at http://licensing.fcc.gov/prod/cdbs/pubacc/Auth_Files/1354317.pdf.

² Opposition of Fisher Broadcasting – Portland TV LLC, licensee of Station KATU(TV) Portland, Oregon (“KATU”) filed Dec. 22, 2011 (“KATU Opposition”); Opposition of NVT Portland Licensee, LLC, licensee of Station KOIN, Portland, Oregon (“KOIN”) filed Dec. 22, 2011 (“KOIN Opposition”).

³ Reply of Crestview Cable Communications filed January 5, 2012 (“Crestview Reply”).

Crestview conceded that it failed to perfect service until January 4, 2012,⁵ and based upon an initial review, the Bureau determined it was necessary for Crestview to supplement the record. Accordingly, on March 28, 2012, the Bureau requested that Crestview submit additional information,⁶ and Crestview filed a supplementary response to which a reply was filed.⁷ For the reasons discussed below, we deny Crestview's petition as to stations KFXO and KOHD but grant it as to KTVZ.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission, commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within their markets.⁸ A station's market is its "designated market area," or DMA, as defined by Nielsen Media Research.⁹ A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, the total television viewing audience attained by a broadcast station is considered, regardless of the delivery technology used to receive its signal – whether the signal is received over-the-air, or via cable, wireless cable, DBS, SMATV or OVS systems.¹⁰

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⁴ Motion for Leave to File Surreply and Surreply to Reply of Crestview Cable Communications by King Broadcasting Company, licensee of Station KGW, Portland Oregon ("KGW") filed Feb. 9, 2012 ("KGW Surreply"). We grant King Broadcasting's request to have us consider its Surreply.

⁵ Letter from James Moskowitz, Counsel for Crestview Communications, to Marlene Dortch, Secretary, Federal Communications Commission (Jan. 4, 2012) (stating Crestview had perfected service of its Petition as of the date of the Letter and enclosing Amended Certificate of Service).

⁶ Given Crestview's failure to submit several pieces of information necessary to complete the record of its Petition and due to its failure to properly serve all parties, we could have dismissed its Petition without prejudice. *See Sagamorehill Broad. of Wyoming/Northern Colo., LLC*, 22 CC Rcd 12944 (2007); *KTNC Licensee, LLC*, 18 FCC Rcd 1832 (2003). Instead, the Bureau requested that Crestview submit additional information and gave opposing counsel the opportunity to raise additional arguments. *See* Letter from Steven A. Broeckaert, Senior Deputy Chief, Media Bureau, FCC to Bruce E. Beard, et al., counsel to the Bend Stations, Mar. 28, 2012 ("March 28 Information Request").

⁷ Response of Crestview Cable Communications to Request for Additional Information (Apr. 27, 2012) ("Crestview Supplementary Response"); Reply and Opposition to Response Providing Additional Information (May 14, 2012) ("KATU Reply to Supplementary Response").

⁸ *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965, 2976-2977 (1993) ("Must Carry Order").

⁹ Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. *See* 47 U.S.C. §534(h)(1)(C). Section 76.55(e) requires that a commercial broadcast television station's market be defined by The Nielsen Company's DMAs. 47 C.F.R. § 76.55(e); *see Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999) ("Modification Final Report and Order").

¹⁰ For a more complete description of how counties are allocated, *see* Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

3. Under the Act, however, the Commission is also directed to consider changes in market areas. Section 614(h)(1)(C) provides that the Commission may:

with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's market to better effectuate the purposes of this section.¹¹

In considering such requests, the 1992 Cable Act provides that:

the Commission shall afford particular attention to the value of localism by taking into account such factors as -

- (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;
- (II) whether the television station provides coverage or other local service to such community;
- (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community;
- (IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.¹²

The legislative history of the provision states that:

where the presumption in favor of [DMA] carriage would result in cable subscribers losing access to local stations because they are outside the [DMA] in which a local cable system operates, the FCC may make an adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the area in which they serve and which form their economic market.

* * * *

[This subsection] establishes certain criteria which the Commission shall consider in acting on requests to modify the geographic area in which stations have signal carriage rights. These factors are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market.¹³

¹¹ 47 U.S.C. § 534(h)(1)(C).

¹² *Id.*

¹³ H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

In adopting rules to implement this provision, the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market.¹⁴

4. In the *Modification Final Report and Order*, the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for modifications that requires the following evidence be submitted:

- (1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.
- (2) Grade B contour maps¹⁵ delineating the station's technical service area¹⁶ and showing the location of the cable system headends and communities in relation to the service areas.
- (3) Available data on shopping and labor patterns in the local market.
- (4) Television station programming information derived from station logs or the local edition of the television guide.
- (5) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

¹⁴ *Must Carry Order*, 8 FCC Rcd 2965, 2977 n.139.

¹⁵ Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit. The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving mountainous terrain or other unusual geographic features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local service to a community under factor two of the market modification test.

¹⁶ While the Grade B contour defined an analog television station's service area, *see* 47 C.F.R. § 73.683(a), with the completion of the full power digital television transition on June 12, 2009, there are no longer any full power analog stations. Instead, as set forth in Section 73.622(e), a station's DTV service area is defined as the area within its noise-limited contour where its signal strength is predicted to exceed the noise-limited service level – which for UHF stations is 41 dBu. *See* 47 C.F.R. § 73.622(e). Accordingly, the Commission has treated a digital station's noise limited service contour as the functional equivalent of an analog station's Grade B contour. *See Report To Congress: The Satellite Home Viewer Extension and Reauthorization Act of 2004; Study of Digital Television Field Strength Standards and Testing Procedures*, 20 FCC Rcd 19504, 19507, ¶ 3, 19554, ¶ 111 (2005); *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Implementation of Section 340 of the Communications Act*, Report and Order, 20 FCC Rcd 17278, 17292, ¶ 31 (2005). *See also Lenfest Broadcasting, LLC*, 19 FCC Rcd 8970, 8974, ¶ 7 n.27 (MB, rel. May 20, 2004) (“For digital stations operating on channels 14-69 [UHF stations], for market modification purposes the 41 dBu DTV service area contour is the digital equivalent of an analog station's Grade B contour.”).

(6) Published audience data for the relevant station showing its average all day audience (*i.e.*, the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.¹⁷

5. Petitions for special relief to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee. The *Modification Final Report and Order* provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant.

6. In the *Carriage of Digital Television Broadcast Signals First Report and Order* (“DTV Must Carry Report and Order”), the Commission concluded that under Section 614(a) of the Act, digital-only television stations had mandatory carriage rights, and amended its rules to reflect this.¹⁸ The Commission also clarified its framework for analyzing market modifications for digital television stations.¹⁹ It found that the statutory factors in Section 614(h), the current process for requesting market modifications, and the evidence needed to support such petitions, would be applicable to digital television modification petitions.²⁰ While the Commission presumed the market of a station’s digital signal would be coterminous with that station’s market area for its prior analog signal, it recognized that the technical coverage area of a digital television signal may not exactly replicate the technical coverage area of its former analog television signal.²¹ Therefore, in deciding DTV market modifications, the Commission would take changes in signal strength and technical coverage into consideration, on a case-by-case basis.²²

III. DISCUSSION

7. Crestview operates cable systems serving communities in the Bend and Portland DMAs and it seeks to add communities from the latter to the markets of the three Bend television stations.²³ These stations – KFXO, KOHD and KTVZ (the “Bend stations”) are all licensed to the city of Bend, in Deschutes County, Oregon – a single county DMA consisting of only Deschutes County.²⁴ KOHD is the local ABC affiliate and KTVZ the local NBC affiliate. Our records indicate KFXO, the local Fox

¹⁷ 47 C.F. R. § 76.59(b).

¹⁸ See 16 FCC Rcd 2598, 2606, 2610 (2001); 47 C.F.R. §76.64(f)(4).

¹⁹ See 16 FCC Rcd at 2635-36. The Commission affirmed that for digital signal carriage issues, it would continue to rely on the Nielsen market designations, publications, and assignments it used for analog signal carriage issues. See *id.* at 2636.

²⁰ See *DTV Must Carry Report and Order*, 16 FCC Rcd at 2636.

²¹ See *id.* In adopting technical rules for the digital transmission of broadcast signals, the Commission attempted to ensure that a station’s digital over-the-air coverage area would replicate as closely as possible its former analog coverage area. See *id.* at 2636 n.254 (citing *Sixth DTV Report and Order*, 12 FCC Rcd 14588, 14605 (1997)).

²² *Id.*

²³ Petition at 3 & n.6, citing Exhibit 2, Declaration of Roger Harris, Controller and Vice President of Cable Operations, Crestview, at ¶ 2 (“Harris Decl.”).

²⁴ Petition at 2.

affiliate, is a Class A low power station.²⁵ Low power stations are not granted the right to modify their markets as both the Communications Act and the Commission's market modification rules apply only to full power stations.²⁶ Accordingly, Crestview's Petition is denied as to KFXO and the remainder of this Order will discuss our determination solely with respect to KTVZ and KOHD.

8. The communities Crestview seeks to add consist of the unincorporated areas and incorporated communities of Prineville in Crook County and Culver, Metolius and Madras in Jefferson County. These Crook and Jefferson county communities lie at the extreme fringe of the Portland DMA and are immediately adjacent to the Bend DMA.²⁷ Crestview argues all three adjacent counties, Jefferson and Crook containing the communities and Deschutes containing the stations, form part of an area or region called "Central Oregon" or the "Tri-County Region,"²⁸ located on the east side of the Cascade Mountain Range and over 100 miles southeast of Portland.²⁹

9. The filing of Crestview's petition raised responses from the larger Portland network affiliate stations' licensees, including Fisher Broadcasting-Portland TV LLC, licensee of Portland ABC affiliate KATU (TV) (hereinafter referenced together as "KATU"); NVT Portland Licensee, LLC, licensee of Portland CBS affiliate KOIN ("KOIN")³⁰; and, King Broadcasting Company, licensee of Portland NBC affiliate station KGW ("KGW"). KATU states their network affiliation agreements prohibit the Bend stations from granting retransmission consent outside the Bend DMA. Therefore, it argues, Crestview's true motivation in expanding these stations' market is to prevent them from removing their signals from its cable systems.³¹ According to KATU, once carriage of these Bend stations is assured, Crestview can then try to secure favorable carriage agreements with the Portland affiliates through the added leverage of

²⁵ See FCC TV Query Record for KFXO-LD, <http://transition.fcc.gov/fcc-bin/tvq?list=0&facid=35464> (last visited Mar. 26, 2012); see also BLTTA-20010712AII, FCC Form 302-CA, KFXO Application for Class A Television Broadcast Station Construction Permit or License, available at https://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/forms/prod/cdbsmenu.htm?context=25&appn=100576794&formid=4&fac_num=35464.

²⁶ In the subsection dealing with "Market Determinations," (i.e., market modification), Section 614(h) of the Communications Act states that "following a written request, the Commission may, with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from its television market." 47 U.S.C. § 534(h)(1)(C)(i). Section 614(h) of the Communications Act also defines "local commercial television station" as "any full power television broadcast station," see 47 U.S.C. § 534(h)(1)(A), and it explicitly excludes "low power television stations" from this definition. See 47 U.S.C. § 534(h)(1)(B). Similarly, the Commission's own rules state that it "may deem that the television market of a particular commercial television broadcast station should include additional communities..." 47 C.F.R. § 76.59(a). And it defines "local commercial television station" as "any full power television broadcast station," excluding "[l]ow power television stations." 47 C.F.R. § 76.55(c).

²⁷ Petition at 2 & n.4.

²⁸ Petition at 4 & n.9, citing Harris Decl. at ¶ 4.

²⁹ Petition at 4 & n.10, citing Exhibit 1, regional map.

³⁰ There is no Bend, Oregon CBS affiliate listed in the Petition. Crestview claims it has not carried KBNZ, the local CBS affiliate in Crook or Jefferson Counties. Petition at 4 n.12 & Harris Decl. at ¶ 7.

³¹ KATU Opposition at 2. Crestview can rely on the "no deletion" rule during the pendency of this proceeding to retain carriage of the Bend stations. KATU Opposition at 2 & n.1, citing 47 C.F.R. § 76.59(d) ("A cable operator shall not delete from carriage the signal of a commercial television station during the pendency of any proceeding pursuant to [the market modification rule section]").

already having the Bend affiliates in the same market.³² However, KOIN adds this petition must fail because the communities do not treat the Bend stations as their ‘local stations.’³³ Furthermore, KGW argues Crestview wrongly assumes it can solve its retransmission consent negotiation problems through market modification, but a network parent could still restrict an affiliate to its home DMA by agreement, notwithstanding the expansion of that station’s must carry territory through market modification.³⁴ KGW further states that if the Commission finds the Bend stations local to the Crook and Jefferson communities, the networks may act to block the Portland affiliates from being on these communities’ cable systems – an overall loss of the very programming these communities prefer to watch.³⁵

10. Crestview replies that its Petition in no way reflects an intention to stop carrying any of the Portland affiliates and that these geographically distant broadcasters are opposing its Petition simply to preserve their ability to use network affiliation agreements to prevent carriage of local stations.³⁶ Furthermore, it argues replacing the Portland affiliates with the Bend affiliates would be contrary to its own competitive interest, harming its position in the market – particularly as satellite carriers would continue to carry the Portland stations, even if it did not.³⁷

A. Procedural Matters

11. As discussed above, Crestview admitted it failed to serve all interested parties until January 4, 2012,³⁸ though it argued it cured this deficiency and that interested parties had received ‘actual notice’ of its Petition.³⁹ Crestview has now repaired its service, and because we granted opposing parties additional time to file responses in our March 28, 2012 letter, these issues are now moot.

12. Additionally, KATU and KOIN argue Crestview failed to satisfy the statutory requirements of Section 76.59(b) in that it failed as part of its Petition to provide: (1) the necessary data to prove a history of carriage;⁴⁰ (2) published ratings data;⁴¹ (3) data on shopping and labor patterns;⁴² and (4) it

³² See *id.*

³³ KOIN Opposition at 10.

³⁴ KGW Surreply at 2.

³⁵ KGW Surreply at 3.

³⁶ Crestview Reply at 3.

³⁷ Crestview Reply at 7.

³⁸ Crestview Reply at 12 & n.39, citing Letter from James Moskowitz, Counsel for Crestview Communications, to Marlene Dotch, Secretary, Federal Communications Commission (Jan. 4, 2012).

³⁹ Crestview Reply at 12, citing *Norwell Television, LLC v. Frontiervision Operating Partners, L.P.*, 16 FCC Rcd 10941 (2001).

⁴⁰ KOIN Opposition at 2, 2-3, 7 & 8. KOIN argues in opposition that Crestview provides no tangible evidence of cable carriage – just the unsupported statements of its Vice President, Roger Harris and current channel lineup cards. KOIN Opposition at 2 & 8.

⁴¹ KATU argues Crestview’s Petition should be dismissed because it fails to include published ratings data as required by Section 76.59(b)(6). KATU Opposition at 3-5, citing 47 C.F.R. § 76.59(b)(1)-(6). KOIN argues that at a minimum, Crestview’s Petition cannot be granted until it provides the relevant ratings information. KOIN Opposition at 6; see also *id.* at 7 & 9.

⁴² KOIN Opposition at 7 & 8.

failed to explain how its programming served the communities it was seeking to add – merely providing copies of pages from local television guides as proof of its locally oriented programming.⁴³

13. KATU and KOIN are correct that we typically dismiss petitions which fail to include basic evidence supporting their case.⁴⁴ However, in lieu of dismissal, we permitted Crestview to file additional evidence supporting its case, subject to the right of opposing parties to file any additional arguments they wished to make.⁴⁵

B. Analysis of the Four Statutory Factors

14. We now analyze all evidence Crestview has submitted to determine whether it meets the four market modification factors. The first statutory factor we consider is “whether the station, or other stations located in the same area have historically been carried on the cable system or systems within such community.”⁴⁶ Crestview first stated, via the Declaration of its General Manager, Roger Harris, that it has carried KTVZ since the 1970s and KOHD for less than a decade – since 2007.⁴⁷ Crestview also filed television guide listings from 2011 showing current carriage of KTVZ and KOHD.⁴⁸ It also asserts it carries, and has carried, stations from the Portland DMA, including KOIN, KGW, KATU, and KUPN, for 55 years, or since construction of the first Crestview system in Madras in 1955.⁴⁹

15. Petitioners typically meet the first statutory factor by filing “cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.”⁵⁰ After Crestview failed to do this, the Bureau requested that it file evidence to substantiate the extent of its historical carriage.⁵¹ Crestview’s supplementary response asserted it had not saved prior versions of its channel line-up cards or guide listings, and instead it provides SA1-2 Short Form Copyright Statements of Account (SOAs) for the years 1997 through 2011. However, as noted by KATU in its reply to this supplement, Crestview has failed to supply the evidence we requested, nor was its filing complete.⁵² From what

⁴³ KOIN Opposition at 2, 3-4.

⁴⁴ See *Sagamorehill Broad. of Wyoming/North. Colorado, LLC*, 22 FCC Rcd 12944, 12945-46 (MB 2007) (dismissing petition for failing to provide (1) maps clearly delineating all of the relevant cable communities or their individual distances from the station's transmitter site, or terrain features that might affect station reception; (2) audience survey data to indicating viewership in the communities; and, (3) data on shopping and labor patterns in the local market); see also *Withers Broad. Co. of West Virginia*, 20 FCC Rcd 17890 (MB 2005) (dismissing petition for failing to provide (1) a map showing predicted a Grade B signal contour, station transmitter site, cable headend location, terrain features affecting reception, and the cable communities and their distances from the transmitter site; (2) data on shopping and labor patterns, (3) recent ratings data; and (4) programming information based on station logs or published television guides (including name of program, general content of program and time period)).

⁴⁵ This matter is no longer subject to statutory deadline given these multiple, necessary extensions.

⁴⁶ 47 U.S.C. § 534(h)(1)(C)(ii)(I).

⁴⁷ See Harris Decl. at ¶ 17.

⁴⁸ See Crestview Petition at Exhibit 3.

⁴⁹ Petition at 5 and n.17, citing Harris Decl. at ¶ 13; see also KATU Opposition at 6-7;

⁵⁰ 47 C.F.R. § 76.59(b)(6).

⁵¹ March 28 Information Request at 2.

⁵² Crestview Supplementary Response at 4 & Attachment 4. As noted in KATU’s Reply to Supplementary Response, Crestview states in its Supplementary Response that it is attaching SOAs for 1993 to 2011, but only
(continued....)

Crestview has submitted one could argue it has carried KTVZ throughout that entire period and that it began carrying KOHD only sometime in late 2007 or in late 2008. Our independent review of the *Television and Cable Factbook* confirms that KTVZ was carried on Crestview's systems in 1998, 2001 and from 2006 through 2012; however, we find no record of KOHD's carriage history in the *Television and Cable Factbook*.⁵³ Given this conflicting information on KOHD, we assume that KTVZ's carriage history has been demonstrated but KOHD's carriage history is not extensive and remains unsubstantiated.

16. The second statutory factor is "whether the television station provides coverage or other local service to such community."⁵⁴ To analyze a station's coverage or local service, we look to a station's signal contour coverage over the communities, its proximity to the communities in mileage, and its provision of programming with a distinct nexus to the communities. As noted above, the Commission has stated that a digital 41 dBu signal contour is the functional equivalent of an analog Grade B contour for UHF channels.⁵⁵ Crestview argues KTVZ and KOHD both transmit from virtually the same location in Bend, Oregon and cover the communities with a Grade B equivalent signal.⁵⁶ Because Crestview's initial petition lacked Longley-Rice maps clearly showing the extent of the Bend stations' coverage, we required Crestview to submit such material. The maps it has now submitted show all of the communities within KTVZ and KOHD's Grade B equivalent contour lines.⁵⁷ However, although Longley-Rice analysis predicts that KTVZ is able to reach all the communities within its 41 dBu contour line, particularly with the aid of its translators, the same is not true for KOHD. All of the communities at issue are predicted to receive a signal just below the 41 dBu threshold from KOHD. KATU argues KOHD fails to provide noise limited service to the communities *at all*.⁵⁸

17. Although our request for supplementary information specifically asked Crestview to submit the distances between the communities and the relevant Bend and Portland stations, Crestview's

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supplied such records for the years 1997 through 2011 and only included SOAs for the first six month period of each year from January 1st to June 30th and omitted the SOAs from July to December for each year (we note that Crestview also failed to submit *all* the Prineville SOAs for 2010). Crestview Supplementary Response at 4 & Attachment 4; KATU Reply to Supplementary Response at 7.

⁵³ See *Television & Cable Factbook* (Madras & Prineville, Oregon), Volumes 2012, 2011, 2010, 2009, 2008, 2007, 2006, 2001, and 1998.

⁵⁴ 47 U.S.C. § 534(h)(1)(C)(ii)(II).

⁵⁵ See *supra* n.16.

⁵⁶ Petition at 7 & n.36, citing Exhibit 6, KTVZ-DT 41 dBu Coverage Contour; Petition at 7 & n.32, citing Exhibit 5, KOHD 41 dBu Coverage Contour.

⁵⁷ Crestview Supplementary Response at 2 & Attachment 2, "Coverage Maps." In opposition, KATU asserts it is rebroadcast by three translator stations relevant to the Communities: K63CC, K29CI and K35LD, which allow it to place an analog Grade A signal over each community except Culver which receives a Grade B signal. KATU Opposition at 7-8. However, we do not find the scope of KATU's coverage has any bearing on whether KTVZ or KOHD's signal covers the communities. Furthermore, KATU admits Bureau precedent largely holds that translator coverage does not substitute for a main station's Grade B coverage. KATU Opposition at 8. See e.g., *Comcast Cable Comm's, LLC*, 26 FCC Rcd 14453, 14460 & n.61 (2011); *Dynamic Cablevision of Florida, Ltd.*, 12 FCC Rcd 9952, 9958 (1997); *Petition of Time Warner of New York City Cable Group*, 11 FCC Rcd 6528, 6539 (1996).

⁵⁸ KATU Reply to Supplementary Response at 4.

supplementary response did not provide any mileage data for the communities of Culver or Metolius.⁵⁹ Accordingly, KATU requests that we deny Crestview's petition entirely as to Culver and Metolius.⁶⁰ The calculations Crestview does provide show that distances between each station and the communities range from 29 to 40 miles.⁶¹ In its original petition, Crestview stated the transmitters for the Bend stations – all situated in virtually the same place⁶² – are 45 miles from Crestview's Madras Headend and 35 miles from Prineville.⁶³ Crestview now states in its supplementary response that both of its cable systems are served from a Madras Headend approximately 38 miles from Bend.⁶⁴ Crestview has argued these distances are well within the range the Commission has found acceptable in prior cases.⁶⁵ Meanwhile, the distances between Portland, Oregon, the community of license of the Portland affiliates, and the communities range from 98 to 124 miles with the distance from Portland to the Madras headend being approximately 99 miles.⁶⁶

18. With its original petition, Crestview argued each station offered significant local programming and as proof it attached copies of television program listings copied from a local television guide for one week in 2011.⁶⁷ It also asserted that KTVZ provided 4 hours of live local programming Monday through Friday, and 1 hour on Saturday and Sunday,⁶⁸ and that KOHD carried 17 hours of live news from Eugene, Oregon weekly.⁶⁹ However, both KATU and KOIN argued in opposition that

⁵⁹ See KATU Reply to Supplementary Response at 3 & nn.4 & 5, citing March 28 Information Request at 2; and, Crestview Supplementary Response at Attachment 1.

⁶⁰ Reply to Supplementary Response at 3-4.

⁶¹ See Crestview Supplementary Response at Attachment 1, Market Modification Distances. By our own calculation, the distances from either the stations' Bend transmitters, or Bend's community coordinates, to the coordinates of each community are: Prineville (29 miles), Culver (32 miles), Metolius (37 miles), and Madras (41 miles). See FCC, Atlas – Find Community Coordinates, <http://transition.fcc.gov/mb/audio/bickel/atlas.html> (To obtain coordinates for the community reference point of Bend, Oregon and the communities, select "OR - Oregon" in the State field, and enter "Bend" or other community name in Community field.) (last visited Mar. 8, 2012); Distance and Azimuths Between 2 Sets of Coordinates, <http://transition.fcc.gov/mb/audio/bickel/distance.html> (To obtain the distance between Bend and communities at issue, enter coordinates retrieved from previous cite.) (last visited Mar. 8, 2012).

⁶² See Petition at 14; see also *supra* n.1.

⁶³ See Petition at 14.

⁶⁴ See Crestview Supplementary Response at 2 & Attachment 1 (taking coordinates for Madras (HE) and Bend (PO) given on Attachment 1, we entered these coordinates into the FCC's webpage: Distance and Azimuths Between 2 Sets of Coordinates, <http://transition.fcc.gov/mb/audio/bickel/distance.html> to obtain a distance of 38 miles).

⁶⁵ Petition at 14-15 (citing cases).

⁶⁶ Crestview's Supplementary Response shows that the distances between the Portland stations' transmitters and Madras and Prineville range from 123.6 to 97.7 miles, whereas the distance from Portland to the Madras headend is approximately 99 miles. See Crestview Supplementary Response at Attachment 1, Market Modification Distances. Our own calculations followed the same steps outlined in note 36 *supra* and we found that the distances from Portland's community coordinates, to the coordinates of each community are: Prineville (123 miles), Culver (99 miles), Metolius (97 miles), and Madras (97 miles). See *supra* n.64 (using the same methodology for calculation).

⁶⁷ Petition at 11 & n.55, citing Exhibit 7, Program Listings Information.

⁶⁸ Petition at 15-16 & nn.79-80.

⁶⁹ Petition at 16 & n.80.

Crestview's record was devoid of evidence showing what programming was specifically aimed at the communities, or even aimed at Crook or Jefferson Counties generally.⁷⁰ We found the Portland stations were correct that Petitioners must typically provide lists of programs or guide listings that include the name, general content descriptions and time period of programs.⁷¹ Furthermore, these examples or lists should demonstrate how the petitioning station aired programming directed at the communities it seeks to serve. Accordingly, we asked that Crestview submit additional evidence to make such a showing.

19. Crestview has filed excerpts from KTVZ's webpage which it asserts demonstrates local news and weather coverage directly targeting audiences in Jefferson and Crook Counties.⁷² KTVZ's webpage also bills the station as "*Central Oregon's News Leader*," and lists ongoing events for Culver, Madras, Prineville and Bend in addition to La Pine, Redmond, Sisters, Sunriver-Three Rivers, and Tumalo.⁷³ Our independent review of samples of programs contained in KTVZ's Issues Programs lists shows that KTVZ airs programming directed at Central Oregon, Deschutes, Crook and Jefferson Counties generally, and at Prineville, Madras, and Culver specifically, in addition to other communities.⁷⁴ However, we were unable to find Issues Programs lists which demonstrated what programming KOHD targeted to these specific communities, and accordingly, because Crestview has failed to file any supplementary information regarding KOHD's programming, we do not find that Crestview has met its burden with respect to KOHD.⁷⁵

20. The third statutory factor is "whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other

⁷⁰ KOIN Opposition at 3; KATU Opposition at 9. KOIN has criticized Crestview for merely stating how many hours of programming each station airs without mentioning what that programming consists of or what issues were covered by it. KOIN Opposition at 3. For example, KOIN argues that it provided over 70 stories involving persons or events from the counties at issue during 2011. KOIN Opposition at 5 & Exhibit A. Portland's KATU argues its Bend co-affiliate KOHD provides no programming of specific interest to the communities, as it appears to air primarily ABC Network or nationally syndicated programming and all of its "local" news programming is actually comes from KEZI, Eugene, Oregon which is commonly owned with KOHD and is located approximately 150 to 180 miles away. KATU Opposition at 9. Meanwhile, KATU argues it provided 75 news items of interest to the communities last year in addition to coverage of weather, alerts, emergencies and school closings. *Id.* at 9 & Exhibit 2.

⁷¹ *Withers Broad. Co. of West Virginia, Licensee of WDTV(TV), Weston, West Virginia*, 20 FCC Rcd 17890, 17892 (Nov. 3, 2005).

⁷² Crestview Supplementary Response, Attach. 3, KTVZ.com "Local News," <http://www.ktvz.com/news/index.html> (last visited May 15, 2012) (showing headings for local news separated out by Local Headlines, Deschutes County News, Bend/Redmond News, Jefferson County News, and Crook County); *see also* KTVZ.com "Weather," <http://www.ktvz.com/weather/index.html> (last visited) (automatically showing the current temperature for Bend and Redmond while weather map in videos shows entire Central Oregon region). Crestview attaches some stories to substantiate its claim that KTVZ provides local coverage, including "Apple Promises Big, Green Prineville Data Center," posted April 21, 2012; "Mothballed Madras Prison May Finally Open," posted April 23, 2012; Maragas Winery [Culver] Marks 'Mother Earth Day,'" posted April 22, 2012. *See* Crestview Supplementary Response, Attach. 3, KTVZ.com "Local News," <http://www.ktvz.com/news/index.html>.

⁷³ *See supra* n.82, citing KTVZ.com "Local News," <http://www.ktvz.com/news/index.html>.

⁷⁴ KTVZ, Public File, <http://www.ktvz.com/public-file/index.html> (last visited May 17, 2012) (reviewing I&P Lists for 1st Quarter to 4th Quarter for each year from 2007 to 2011).

⁷⁵ Nor were we able to find relevant data to assist us in making an independent determination.

events of interest to the community.”⁷⁶ In general, we believe that Congress did not intend this third criterion to operate as a bar to a station’s market modification claim whenever other stations could also be shown to serve the communities at issue.⁷⁷ Rather, we believe this criterion was intended to enhance a station’s claim where it could be shown that other stations do not serve the communities at issue.⁷⁸ In this case, because other stations serve the communities in question, this enhancement factor is not applicable.

21. The fourth statutory factor concerns “evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.”⁷⁹ Both KATU and KOIN asserted in their Oppositions that Crestview’s failure to provide viewership data made its complaint fatally flawed.⁸⁰ Crestview relies on only the Declaration of its General Manager, Roger Harris to support its claims that the Bend stations have a long established viewing audience in the communities,⁸¹ and it concedes it did not provide Nielsen data with its Petition.⁸² However, as Mr. Harris admits, the Portland stations have significantly higher viewership in these communities,⁸³ and Crestview argues granting its petition will therefore not result in the loss of the Portland stations.⁸⁴

22. KATU attaches a copy of the 2011 Nielsen County Coverage Study/County Summary for Crook and Jefferson Counties to demonstrate there was very little to virtually no viewership for the Bend Stations during each day part and in each sweeps period.⁸⁵ In Crook County, the Total Day Share (Monday-Sunday 7 a.m. to 1 a.m.) for all county households for the Portland Stations is 30, while the share for the Bend Stations during the same period is 5.⁸⁶ During this same period, KATU, KGW, KOIN and KPTV individually had average-quarter hour audience shares of 8, 5, 11 and 4 percent (hereinafter “total share”) whereas total viewing by all households for at least one-quarter hour per day (hereinafter “total cume”) was 96, 90, 96 and 80.⁸⁷ Meanwhile, the stations at issue, KTVZ and KOHD, had the following total share/cume values in Crook County: 3/36 and -/19. In Jefferson County, KATU, KGW,

⁷⁶47 U.S.C. § 534(h)(1)(C)(ii)(III).

⁷⁷See e.g., *Great Trails Broadcasting Corp.*, 10 FCC Rcd 8629, 8633, ¶ 23 (1995); *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520, 17526, ¶ 13 (1997).

⁷⁸See *id.*

⁷⁹47 U.S.C. § 534(h)(1)(C)(ii)(IV).

⁸⁰ KATU Opposition at 11; KOIN Opposition at 9. In fact, KOIN argues, not only was the Harris Declaration insufficient, but the information Harris reviewed to arrive at his conclusions was also not the right ratings data. KOIN Opposition at 9.

⁸¹ Petition at 9 & n.48, citing Harris Decl. at ¶¶ 19-20 (Stating that “[t]he Bend stations treat subscribers in Crook and Jefferson Counties as local viewers in their news coverage and include local news stories, public service announcements and informational announcements such as school closings for these areas. These counties are important local advertising markets for the broadcasters transmitting from Bend.)

⁸² See Reply at 4 & 7-8.

⁸³ Petition at 17-18 & nn.89-92, citing Harris Decl. at ¶¶ 20-22 (Stating that as many as 75% of viewers watching Portland stations).

⁸⁴ See Crestview Reply at 5-6.

⁸⁵ KATU Opposition at 11.

⁸⁶ KATU Opposition at 11, citing 2011 Nielsen County Coverage Study for Crook County at 4451.

⁸⁷ See 2011 Nielsen County Coverage Study for Crook County at 4451.

KOIN and KPTV had the following total share/cume values: 1/25, 1/22, 1/16, 2/24, while, the Bend Stations had no reportable or measurable Total Day share.⁸⁸ KATU also attaches data from custom Nielsen Reports from May, July and October 2011 for Crook and Jefferson Counties to argue there is an overwhelming preference in the communities for Portland stations.⁸⁹ Crestview replies that while KATU and the other Big 4 Networks dominate the market in Crook and Jefferson Counties, the ratings evidence shows there is some, “albeit small,” audience for the Bend stations in the communities and this is significant.⁹⁰

23. Our independent review of Nielsen viewership statistics shows that KTVZ often achieves measurable ratings behind KATU, KGW and KOIN.⁹¹ Furthermore, KTVZ along with KATU, KGW and KOIN are all listed as significantly viewed stations in Crook and Jefferson Counties while KOHD is not.⁹² Although we offered Crestview the opportunity to provide additional arguments concerning how the Bend stations’ ratings supported its case, it declined to do so in its supplementary response.⁹³

24. Finally, Crestview raises economic considerations, citing to the website of a local private non-profit organization – Economic Development for Central Oregon – which defines the three counties including the communities at issue as being within “Central Oregon”⁹⁴ or the “Tri-County Area” or region;⁹⁵ the same site states “[t]he largest city in Central Oregon, Bend is the commercial, recreation and social center of the tri-county region.”⁹⁶ Crestview asserts that Bend is where local people from these

⁸⁸ See *id.* at 4467.

⁸⁹ See KATU Opposition at 12-13, citing Exhibit 4, Custom Nielsen Reports for May, July and October 2011).

⁹⁰ Crestview Reply at 6.

⁹¹ The 2006 Nielsen County Coverage Data for Crook County showed the following share/cume values: KATU (11/57), KGW (5/37), KOIN (9/58) as compared to KTVZ (11/46), and in Jefferson County: KATU (13/70), KGW (12/50), KOIN (12/71), and KTVZ (11/36) with no ratings for KOHD in either County; In 2007, these same stations achieved KATU (9/53), KGW (7/46), KOIN (15/65), and KTVZ (12/44) with no ratings for KOHD in Crook, and in Jefferson County they garnered KATU (11/57), KGW (7/42), KOIN (12/55), KTVZ (12/37), including a KOHD value of 1/2; In 2008 for Crook County, the stations obtained the following ratings: KATU (8/55), KGW (6/46), KOIN (9/49), KTVZ (16/47) and KOHD (-/7) and in Jefferson County KATU (10/54), KGW (7/54), KOIN (10/60), and KTVZ (9/35), with again no rating for KOHD; in 2009, the five stations received KATU (10/52), KGW (3/44), KOIN (4/52), KTVZ (9/40), and KOHD (-/3), respectively, in Crook County and KATU (6/58), KGW (4/45), KOIN (9/54), KTVZ (4/22) and KOHD (-/6) in Jefferson County; and, finally in 2010, obtained KATU (4/62), KGW (7/53), KOIN (7/64), KTVZ (5/36) and KOHD (1/12) in Crook County and KATU (3/58), KGW (4/57), KOIN (4/53) and KTVZ (4/24) with no KOHD values.

⁹² See the FCC’s Significantly Viewed List at 337-38, available at <http://transition.fcc.gov/mb/significantviewedstations031011.pdf>.

⁹³ Crestview Supplementary Response at 4.

⁹⁴ Petition at 19 & n.96, citing Economic Development for Central Oregon: Home - Welcome to Central Oregon, <http://www.edcoinfo.com/default.aspx> (last visited March 8, 2012) (stating that “[t]he Central Oregon region is known for its dramatic snow-capped mountain ranges, farmlands, and high desert plateaus of Crook, Deschutes and Jefferson counties.”).

⁹⁵ Petition at 19 & n.96, citing Exhibit 13, Map labeled “Central Oregon Tri-County Area” http://www.edcoinfo.com/CEDDocuments/Downloads_GetFile.aspx?id=318093&fd=0.

⁹⁶ Economic Development for Central Oregon: Regional Facts: Population - Population Demographics, <http://www.edcoinfo.com/regional-facts/population/population-demographics/default.aspx> (last visited March 8, 2012). The Oregon Employment Department’s Labor Market Information System also summarizes employment (continued....)

counties go for shopping, entertainment and medical treatment.⁹⁷ It also notes that Deschutes and Crook Counties are in the same combined statistical area,⁹⁸ though KATU counters this by arguing that Jefferson County is not included in the same MSA by the Census Bureau, so that by the same logic it should not be considered part of the same market.⁹⁹ KOIN argues in its opposition that Crestview provides no real evidence of shopping data other than Harris' declaration that Bend is the shopping community for the region, and it argues Crestview's reliance on Exhibit 12, the website for Economic Development for Central Oregon, to support its labor patterns claim is also insufficient as this fails to discretely analyze the communities – nor is it explained how the information supports the Petition.¹⁰⁰ However, the Mayor of Prineville has written, expressing support of Crestview's petition and noting that Deschutes, Crook and Jefferson Counties are all in the same Second Congressional District – which doesn't include Portland or its surrounding counties.¹⁰¹

25. Crestview states local residents do commute between these central Oregon communities for work.¹⁰² However, there is no similar commuting between Portland and either Crook or Jefferson Counties.¹⁰³ It states the drive from Madras to Portland covers 120 miles over secondary roads (which are sometimes closed in winter months) traversing the Cascade Mountain range and taking 2.5 hours, with the drive to Prineville from Portland taking even longer.¹⁰⁴ Our investigation found that the Census Bureau's "OnTheMap" Home Destination Analysis yields the information that in 2009, 79.6% of those employed in Bend were from the counties of Deschutes (75.5 %), Crook (2.6%) and Jefferson (1.5%) with at least another 7.6% contributed by other Portland DMA counties – with similar distributions found among all the communities at issue.¹⁰⁵ One author cited by the Oregon Employment Department concludes that

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data for Deschutes, Crook and Jefferson Counties as the "high desert" region. *See* Worksource, Region 10 – Employment, <http://www.qualityinfo.org/olmisj/Regions?area=000010&page=2> (last visited Mar. 9, 2012).

⁹⁷ Petition at 19 & nn.101-3, citing Harris Decl. at ¶ 5 & Exhibit 15, St. Charles Health System: Serving Central Oregon with Community Pride, <http://www.scmc.org/about/overview.html> (last visited Mar. 9, 2012).

⁹⁸ Petition at 19 & n.98, citing Exhibit 14, MSA Map of Oregon (map showing that the 'Bend-Prineville Combined Statistical Area' consists of the Bend Metropolitan and the Prineville Micropolitan Statistical Areas).

⁹⁹ KATU Opposition at 15.

¹⁰⁰ KOIN Opposition at 8.

¹⁰¹ *See* Letter from Betty J. Roppe, Mayor of Prineville to Marlene H. Dortch, Secretary, FCC, January 19, 2012; *see* Oregon's Second Congressional District, Representatives & District Map, GovTrack.us, <http://www.govtrack.us/congress/members/OR/2> (last visited May 22, 2012); *see also* Wikipedia, Oregon's Second Congressional District, http://en.wikipedia.org/wiki/File:Or02_109.gif (last visited May 22, 2012).

¹⁰² Petition at 19-20 & n.104, citing Economic Development for Central Oregon: Business Resources – Workforce (stating that "[t]he 1000,000+ people that comprise the region's workforce travel frequently between communities.") (last visited March 8, 2012).

¹⁰³ Petition at 20.

¹⁰⁴ Petition at 20 & n.105, citing Harris Decl. at ¶ 25.

¹⁰⁵ 86.4% of those employed in Prineville were from the counties of Crook (65.1%), Deschutes (17.8%) and Jefferson (3.5%) with at least another 2.8% contributed by other Portland DMA counties; 86.4% of Madras employees were from the counties of Jefferson (67.2 %), Deschutes (13.2%) and Crook (6.0%) with at least another 4.4% contributed by other Portland DMA counties; 80.0% of those employed in Culver were from the counties of Jefferson (53.1%), Deschutes (14.6%) and Crook (12.3%) with at least another 8.4% contributed by other Portland DMA counties; and, 92.3% of Metolius employees were from the counties of Jefferson (70.3 %), Deschutes (20.9%)

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while this Census Bureau data draws a connection between Bend and Portland in the long-distance commuter data, it seems “unlikely” that “a large number of workers living in Bend travel three or more hours each way to work Monday through Friday.”¹⁰⁶ These central Oregon communities are also linked by both rail¹⁰⁷ and highway¹⁰⁸ transportation routes. Accordingly, these communities appear linked by major rail and highway transportation routes running through central Oregon.

26. In its supplementary response, Crestview attaches analysis entitled “The Potential Economic Impacts of the Badlands Wilderness in Central Oregon,” which it asserts also shows that Bend and the surrounding Crook, Deschutes and Jefferson Counties operate as a unified market area and demonstrates the economic, social and governmental connections between the counties and the communities.¹⁰⁹ We also note that representatives of the Board of Commissioners from Deschutes, Crook and Jefferson Counties have been participating in guiding recent health care change through development of a Central Oregon Health Council.¹¹⁰

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and Crook (1.1%) with at least another 3.3% contributed by other Portland DMA counties. See <http://onthemap.ces.census.gov/> (Enter community name, Prineville, Culver, Madras or Metolius and “Search,” then choose “Perform Analysis on Selected Area” and in pop-up box, select “Work” in Home/Work, “Destination – Counties” in Analysis Type, “2009” for Year, and “Primary Job” for Job Type.) (last visited Mar. 9, 2012).

¹⁰⁶ Gail Krumenauer, WorkSource – Oregon Employment Department, “Oregon’s Metro Commuters: Distance, Direction, and Net Flows,” <http://www.qualityinfo.org/olmisj/ArticleReader?itemid=00007546#seg0004> (last visited Mar. 9, 2012).

¹⁰⁷ There are two main rail lines linking central Oregon, one of which is the Burlington Northern Santa Fe (BNSF) Railway with 101 mainline route miles in Deschutes and Jefferson Counties (running from La Pine up to Madras) with 8-12 trains passing through each day; the second line is owned by the City of Prineville Railway with 19 miles of track that runs from Prineville to Prineville Junction (just north of Redmond, near the intersection of US 97 and the O’Neil Highway) where it connects with BNSF, and with 1 train passing over it per day. Oregon.gov, ODOT Region 4, Central Oregon Rail Planning, Final Report - November 2009: Background, http://www.oregon.gov/ODOT/HWY/REGION4/Central_Oregon_Rail_Plan/Central_Oregon_Rail_Plan.shtml, (last visited May 17, 2009).

¹⁰⁸ All the communities are also linked by US Highway 97, running north to south, except for Prineville, which appears linked to US 97 via three smaller highways. Oregon.gov, 2011 Central Oregon Highway Construction Map, http://www.oregon.gov/ODOT/HWY/REGION4/2011_R4_Construction_Map.shtml (last visited May 17, 2012).

¹⁰⁹ Crestview Supplementary Response, 5 & Attach. 5, The Potential Economic Impacts of the Badlands Wilderness in Central Oregon (hereinafter “Badlands Study”). Crestview notes page 4 of the Badlands Study states that Deschutes, Crook and Jefferson counties “are generally understood to comprise Central Oregon and function as an economic region.” *Id.*, citing Badlands Study at 4. Although it does not argue its relevance, Crestview also raises the finding in the Badlands Study that as of 2005, Jefferson County has sent 16% of its workforce to Deschutes and 14% percent to Crook County; Crook County has sent 13% to Deschutes and 11% to Jefferson; and, Deschutes itself sends 1% to Crook and 0.7% to Jefferson. *Id.*, citing Badlands Study at 10. Crestview points to certain summary statements in the Badland Study, presumably reflecting its arguments. *Id.*, citing Badlands Study at 15 (stating that the “three-county region is functionally connected through commuting-for-work patterns” with “[e]ach county therefore shar[ing] an interest in how economic resources are managed in individual counties,” but that Deschutes County “is the driving economic force in the area, and a net draw for jobs in the region.”) and 42-54.

¹¹⁰ Central Oregon Health Council, Executive Summary, <http://cohealthcouncil.org/about-us/executive-summary> (last visited May 17, 2012).

27. In opposition, KATU responds that the greater geographic proximity of Bend stations rather than the Portland stations to the Crestview headends serving these communities actually argues against the addition of these communities under Commission precedent, as explained in a set of cases called the *Portland Decisions* interpreting the effect of Section 76.56(b)(5).¹¹¹ In each of the *Portland Decisions*, network affiliates from the Portland-Poland Spring, Maine ADI had petitioned the Bureau to add communities from the Boston, Massachusetts ADI to their market. Although these petitioning out-of-market stations met the four statutory factors, competing affiliates from the Boston ADI faced the possibility of losing carriage within their own market.¹¹² This possibility arose due to Section 76.56(b)(5) of our rules which allows cable operators to choose to carry only the network affiliate whose community of license is closest to their system headend, and in two of the *Portland Decisions*, the out-of-market petitioner was, on average, closer.¹¹³ The Portland affiliates' petitions were all denied so as not to jeopardize the in-market affiliates' must-carry status.¹¹⁴ KATU argues the Portland, Oregon DMA affiliates would all lose their carriage for the same reason in this case – they are all farther from the Crestview headend than the Bend stations. Crestview responds that carriage of the Portland stations would not be placed in jeopardy if its Petition were granted given that it faces heavy competition from DBS providers who have provided the Portland stations in HD for years, and any instance where DBS offers programming that Crestview does not creates significant competitive harm to Crestview.¹¹⁵

28. We believe that in this instance, the considerations addressed in the *Portland Decisions* would not bar the addition of these communities to station KTVZ's market. KTVZ is considerably closer to both the relevant communities and cable headend serving them than the in-market affiliate station, KGW; furthermore, these communities lie at the farthest fringe of the Portland DMA – adjacent to the Bend DMA and across the border from KTVZ, and they are not in the core of the Portland market.¹¹⁶ Cases have granted market modifications creating exceptions to the *Portland Decisions* where the competing affiliates were not equidistant from the communities at issue, and where the communities added were non-core, located at the fringe of their DMA and closer to the out-of-market station.¹¹⁷

¹¹¹ *Guy Gannett Commc'ns., Inc.*, 13 FCC Rcd 23470 (1998), *aff'd*, 15 FCC Rcd 10762 (2000) (“*Guy Gannett*”); *Pacific & Southern Co., Inc.*, 14 FCC Rcd 4558 (1999) (“*Pacific & Southern*”); *Harron Commc'ns. Corp.*, 14 FCC Rcd 4547 (1999) (“*Harron*”).

¹¹² *Guy Gannett*, 13 FCC Rcd at 23478 ¶¶ 20-22; *Pacific & Southern*, 14 FCC Rcd at 4565 ¶¶ 24-26 (1999). In *Harron*, because both of the competing ABC affiliates from the Boston ADI were in fact closer than the petitioner, displacement due to Section 76.55(b) of our rules was not an issue in that case, yet the Bureau nevertheless analyzed the effects of granting the petitioner's request on affiliate relationships. See *Harron*, 14 FCC Rcd at 4553 ¶17 & 4556 ¶ 26.

¹¹³ See *Guy Gannett*, 13 FCC Rcd at 23478 ¶ 22; *Pacific & Southern*, 14 FCC Rcd 4565 ¶ 26 (1999).

¹¹⁴ *Guy Gannett* 13 FCC Rcd at 23479 ¶ 25; *Pacific & Southern*, 14 FCC Rcd at 4566 ¶ 29 (1999); *Harron*, 14 FCC Rcd at 4556 ¶ 28.

¹¹⁵ Crestview Reply at 7 & n.15, citing KATU Opposition at 10; Harris Decl. at ¶ 21.

¹¹⁶ See *supra* ¶ 18 & nn.68, 73; see also Supplementary Response at Attach. 1. Further, Bend is approximately 37.7 miles from the Madras headend whereas Portland is 99.3 miles from it, making Portland approximately 62 miles farther from that headend. FCC Encyclopedia, Distance and Azimuths Between Two Sets of Coordinates, <http://www.fcc.gov/encyclopedia/distance-and-azimuths-between-two-sets-coordinates> (last visited May 22, 2012).

¹¹⁷ See *Seal Broad., LLC*, 18 FCC Rcd 16262, 16268 (Aug. 6, 2003) (the out-of-market station was considerably closer to the communities and these communities were at the southern fringe of their market, near the border with the DMA containing the out-of-market station); *Ackerley Media Group, Inc.*, 18 FCC Rcd 16199, 16205 (Aug. 4, 2003) (continued...)

Furthermore, the Cascade Mountain range poses a serious geographic impediment to both the reception of the Portland stations' signal (without translator assistance) and to regular daily travel between the communities and Portland (the trip can take over two hours); accordingly, this mountain range forms a substantial geopolitical boundary between the communities and the Portland stations.¹¹⁸ In fact, the counties on the other side of the Cascades are in a different Congressional District. KTVZ is also significantly viewed in both Crook and Jefferson Counties and has shown that it devotes programming to address issues in these communities and their counties. Finally, ratings information indicates that KTVZ is one of the most watched stations in this area by residents of these communities.¹¹⁹ The Portland DMA stations are unlikely to be dropped since they have a long history of carriage in these communities, while KTVZ is in a unique position to provide programming focused narrowly on Central Oregon.¹²⁰

29. In conclusion, given KTVZ's historic carriage, its much greater proximity to the communities than the geographically separate Portland stations, its evidence of programming specifically directed to the communities, its significantly viewed status and ratings, and finally, the economic, political and social ties between and among Deschutes, Crook and Jefferson counties in Central Oregon – we find that the unincorporated areas and incorporated communities of Prineville, Culver, Metolius, and Madras, should be added to KTVZ's market. However, Crestview failed to bolster the evidentiary record with respect to KOHD as we requested. Therefore, we have only an ambiguous picture of KOHD's brief history of carriage. This factor, taken together with KOHD's apparent failure to cover the communities with a 41 dBu signal, its failure to substantiate whether it airs any programming directed to the communities at issue, and finally, its comparatively low and sometimes non-existent ratings (unlike KTVZ it is also not significantly viewed), altogether cause us decline to add KOHD to these Bend stations' market without further proof.

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2003) (same). These exceptions are made where core market communities are not involved. *See Duhamel Broad Enters.*, 15 FCC Rcd 4965, 4972 (Mar. 14, 2000).

¹¹⁸ *See Gray Tele. Licensee, Inc.*, 21 FCC Rcd 8719, 8727 (“unlike the *Portland* decisions, substantial geopolitical boundaries separate WJLA-TV from the communities in the form of the Blue Ridge Mountains which completely bisect the Washington, D.C. DMA, forming eastern and western political boundaries.”)

¹¹⁹ *See Young Broad. of Lansing*, 24889, 24895 (Nov. 26, 2003) (out-of-market station was assisted by its significantly viewed status).

¹²⁰ *See id.* at 8729.

IV. ORDERING CLAUSES

30. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and Section 76.59 of the Commission's rules, 47 C.F.R. § 76.59, that the above captioned petition filed by California-Oregon Broadcasting, Inc. d/b/a Crestview Cable Communications seeking to extend the must carry markets of Bend, Oregon stations KFXO, KOHD and KTVZ located in the Bend DMA to the communities of Prineville (Crook County), and Culver, Madras and Metolius (Jefferson County) in the Portland DMA, as well as unincorporated areas therein **IS GRANTED IN PART** as to KTVZ, Bend Oregon, and **IS DENIED IN PART** as to stations KFXO and KOHD.

31. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹²¹

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Senior Deputy Chief, Policy Division
Media Bureau

¹²¹ See 47 C.F.R. § 0.283.